

**Case No. : C.W.P.No.1272 of 2006**

**Date of Decision : May 14, 2007**

Sushil Kumar ..... Petitioner

 $V_S.$ 

State of Punjab and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.

HON'BLE MR.JUSTICE L.N.MITTAL.

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Present : Mr.D.R.Mahajan, Advocate  
for the petitioner.

Mr.Parveen Goel, Senior DAG, Punjab  
for the respondents.

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L.N.MITTAL, J. :

The petitioner was inducted into service of respondents, as Constable on 28.09.1990, being an outstanding sportsman. He was deputed to Punjab Armed Police, Bahadurgarh, for practice for All India Boxing Championship, on 25.09.1991. After participation in the said championship, he was transferred from District Ropar to District Sangrur. He was relieved from district Ropar on 27.11.1992 and reported at Police Lines, Sangrur on 30.11.1992.

During practice session, nasal bone of the petitioner was fractured on 23.2.1993 and he was admitted in Civil Hospital, Sangrur and discharged on 2.3.1993 and was advised bed rest till 31.3.1993.

The petitioner was allegedly reporting to the Coach for training, but he was reported to be absenting since 2.12.1992. He was issued notice regarding the said absence. He was suspended on 11.06.1993. Charge-sheet was served on him on 11.9.1993 by the Inquiry Officer. The petitioner was held guilty of the charges by the Inquiry Officer vide his report dated 17.02.1994. The Senior Superintendent of Police, Sangrur, vide order dated 25.02.1994 (Annexure P-10) deducted the petitioner's service for three years permanently and resultantly, his three increments were decreased. Period of petitioner's absence from 2.12.1992 to 24.2.1994 was treated without duty.

Another inquiry was ordered against the petitioner by the Senior Superintendent of Police, Sangrur (respondent no.3) on 1.3.1994. Charge-sheet was served on the petitioner on 29.06.1994. Inquiry Report was submitted on 07.08.1994. Respondent no.3, vide order dated 10.11.1994 (Anexure P-13), dismissed the petitioner from service.

The petitioner preferred appeal against orders dated 25.2.1994 and 10.11.1994 before the Deputy Inspector General of Police, Patiala Range, Patiala. The petitioner's appeal against order dated 10.11.1994 was allowed, vide order dated 20.01.2000 (Annexure P-14), to the extent that the petitioner's order of dismissal from service was set aside but the period from 10.11.1994 till 20.01.2000, during which the petitioner remained out of service, was ordered to be treated as leave of the kind due. The petitioner preferred revision petition against the order dated 20.01.2000. The said revision petition was dismissed vide order dated 02.11.2000 (Annexure P-16), passed by the Inspector General of Police, Punjab. The petitioner preferred review petition against the same, which was, however, dismissed vide order dated 07.06.2005 (Annexure P-20).

The petitioner filed mercy petition before the Government. The

said mercy petition was disposed of vide order dated 23.12.2003 (Annexure P-17), modifying the punishment order dated 25.2.1994 (Annexure P-10) and awarding punishment of censure to the petitioner. It was also ordered that the period from 20.2.1993 to 31.3.1993 shall be treated as leave of the kind due but the petitioner shall be treated on duty from 2.12.1992 to 24.2.1994 (except for the above mentioned period of leave) and shall also be entitled to all other benefits accordingly.

The petitioner, through the instant writ petition, has impugned order dated 07.06.2005 (Annexure P-20) passed by Director General of Police, Punjab (respondent no.2). The petitioner also seeks direction to the respondents to release service benefits to him for the period from 10.11.1994 to 20.01.2000, in view of the order dated 23.12.2003 (Annexure P-17).

Learned counsel for the petitioner vehemently contended that vide order dated 23.12.2003 (Annexure P-17), petitioner's period of absence was treated to be on duty and therefore, he is entitled to all service benefits for the period from 10.11.1994 to 20.01.2000. The argument is completely misconceived and devoid of merit. Perusal of order dated 23.12.2003 reveals that petitioner's absence for the period from 02.12.1992 to 24.02.1994 was treated to be duty period except for leave of the kind due from 20.02.1993 to 31.03.1993. However, order dated 23.12.2003 does not deal with the period from 10.11.1994 to 20.01.2000, during which the petitioner remained out of service, in pursuance of dismissal order dated 10.11.1994, till his reinstatement vide order dated 20.01.2000. No direction was given in order dated 23.12.2003 to treat the said period from 10.11.1994 to 20.01.2000 as the period spent on duty. So, aforesaid contention of learned counsel for the petitioner has to be negated.

On the other hand, petitioner's appeal against dismissal order

dated 10.11.1994 was disposed of vide order dated 20.01.2000, thereby setting aside the petitioner's dismissal but also ordering that the period during which he remained out of service (from 10.11.1994 to 20.01.2000), will be treated as leave of the kind due. Petitioner's revision petition against the said order was dismissed vide order dated 02.11.2000 (Annexure P-16). Petitioner's review petition against the same was also dismissed vide order dated 07.06.2005 (Annexure P-20). Thus, order dated 20.01.2000 directing that the aforesaid period from 10.11.1994 to 20.01.2000 shall be treated as leave of the kind due has attained finality.

The petitioner, through the instant writ petition, has challenged order dated 07.06.2005 (Annexure P-20). However, there is no infirmity in the said order. In fact, the petitioner, by filing the review petition, sought review of order dated 02.11.2000 after lapse of more than four years. The said review petition was dismissed vide order dated 07.06.2005 (Annexure P-20) as the petitioner's claim already stood rejected by speaking order dated 02.11.2000 (Annexure P-16). The petitioner has claimed that order dated 07.06.2005 is vitiated because vide order dated 23.12.2003, petitioner was treated to be on duty. The petitioner's claim, in this regard, is totally misconceived and untenable. As already noticed herein above, vide order dated 23.12.2003, period of petitioner's absence from 2.12.1992 to 24.2.1994 only, was dealt with. However, the period from 10.11.1994 to 20.01.2000, during which the petitioner remained out of service, was not dealt with at all, by order dated 23.12.2003. Consequently, it cannot be said that order dated 07.06.2005 is bad being repugnant to order dated 23.12.2003 because in fact, there is no such repugnancy between the two orders.

Taking into consideration the totality of the circumstances, we find no infirmity in the order dated 20.01.2000 ordering that the period from

10.11.1994 to 20.01.2000 will be treated as leave of the kind due, as affirmed by order dated 02.11.2000 and order dated 07.06.2005.

For the reasons recorded herein above, we find no merit in this writ petition and the same is accordingly dismissed.

( L.N.MITTAL )  
JUDGE

May 14, 2007  
*monika*

( J.S.KHEHAR )  
JUDGE